

The Corporation of the Township of Whitewater Region

By-law Number 22-05-1506

A by-law to Regulate Fences and Enclosures around Privately Owned Swimming Pools in the Township of Whitewater Region

Whereas, the Council of the Corporation of the Township of Whitewater Region deems it advisable and expedient to enact this By-Law;

Whereas, Paragraph 30 of Section 210 of the Municipal Act, R.S.O., 1990, Chapter 302, as amended, authorized the Municipality to pass By-Laws to require owners of privately owned swimming pools to erect and maintain fences and gates around such swimming pools, for prescribing the height and description of and the manner of erecting and maintaining such fences and gates, for prohibiting persons from placing water in privately owned outdoor swimming pools or allowing water to remain therein until the prescribed fences and gates have been erected, for requiring the production of plans of all such fences and gates, for the issuing of a permit certifying approval of such fences and gates, for the issuing of a permit certifying approval of such plans without which permit no privately owned outdoor swimming pool may be excavated for or erected and for authorizing the refusal of a permit for any such fences or gates that if erected would be contrary to the provisions of any By-Law of the Municipality;

Now therefore Council of the Corporation of the Township of Whitewater Region enacts as follows:

1.0 Definitions

Chief Building Official shall mean the Chief Building Official appointed by Council under Section 3 of the Ontario Building Code Act.

Township shall mean the Corporation of the Township of Whitewater Region.

Enclosure shall mean a fence, wall or other structure, including doors and gates, surrounding a privately owned outdoor swimming pool to restrict access thereto.

Hot Tub shall mean a container filled with heated water circulated with jets used for communal leisure and / or therapeutic bathing and includes a Jacuzzi, spa, or whirlpool.

Permit shall mean a permit issued under this by-law and the Municipality's Building By-law.

Person shall include a Firm Partnership, Company, Corporation, Contractor or Owner.

Privately Owned Swimming Pool shall mean a privately owned body of water, which is:

- a) located outdoors;
- b) wholly or partially contained by artificial means;
- c) capable of holding water in excess of thirty (30)

centimetres at any point;

d) an open exposed water surface of at least one (1) square metre and includes a landscape / decorative pond meeting the above criteria, but for purposes of this By-law does not include a:

- i) pond or reservoir to be utilized for farming purposes or as part of a golf course,
- ii) pool owned by any public or governmental body, agency or authority,
- iii) natural body of water or stream.
- iv) public or privately owned stormwater management pond,
- v) hot tub

Self-Closing Device shall mean a mechanical device or spring which returns a gate to its closed position after it has been opened.

Self-Latching Device shall mean a mechanical device or latch which is engaged each time the gate is secured to its closed position, which will not allow the gate to be re-opened by pushing or pulling and which will ensure a gate remains closed until unlatched by either lifting or turning the device itself directly or by a key.

Township shall mean the Corporation of the Township of Whitewater Region.

2.0 Prohibitions

2.1 No person shall construct or install a pool, cause a pool to be constructed or installed, or commence the construction or installation of a pool without first obtaining the relevant permit from the Township.

2.2 No person shall construct or install a pool or cause a pool to be constructed or installed which is not completely enclosed by a pool enclosure in accordance with this By-law.

2.3 No person shall construct or cause to be constructed any pool enclosure which does not conform to the requirements of this By-law, or permit such nonconforming pool enclosure to continue to enclose a pool.

2.4 No person shall fill a pool with water or cause a pool to be filled with water or allow water to remain in a pool unless:

- a) the pool is enclosed by a pool enclosure meeting the requirements of Section 3 of this By-law;
- b) the designated official has been notified and the pool enclosure has been inspected and approved by the Municipality;

2.5 No person shall remove or permit the removal of any part of a pool enclosure if the pool is filled with water.

2.6 No person shall alter or replace or permit the alteration or replacement of a pool enclosure without having first obtained the relevant permit from the Municipality.

2.7 Every owner shall ensure that:

- a) all gates and doors forming part of the pool enclosure meet the standards of this By-law;
- b) all gates and doors forming part of a pool enclosure are secure when the area is not in active use;
- c) the lockable lid of any hot tub is closed and locked when not in active use unless the hot tub is located within a pool enclosure meeting the requirements of this By-law.

2.8 No person shall place, pile, attached or lean any object or

material against or near a pool enclosure so as to facilitate climbing of a pool enclosure, diminish the structural integrity of a pool enclosure or render the pool enclosure in nonconformity with the provisions of this By-law.

- 2.9** No person shall allow or construct any part of any enclosure required by this Bylaw which consists of barbed wire or which conducts an electric current or which poses a danger of injury to a person who comes in contact with said enclosure.

3.0 Enclosures

- 3.1** No person shall construct a privately owned outdoor swimming pool or erect a fence around same without first acquiring the necessary permit or permits from the Chief Building Official. The application for a permit shall include a plot plan satisfactory to the Chief Building Official.

- 3.2** No person shall have a privately owned outdoor swimming pool in the Township unless the area is completely enclosed by fencing; or the combined height of the exterior sides of the swimming pool structure and or any rail or guard attached thereto shall be in compliance with the requirements of this By-Law.

a) Such fencing, or exterior sides including gates therein shall extend from the ground to height of not less than 1.2 metres (4 feet) and shall fulfill the intent of prohibiting unauthorized trespass into the pool area.

- 3.3** A fence forming part of such enclosure shall meet the following requirements:

- a) Have no rails or other horizontal or diagonal bracing or attachments on the outside face that may facilitate climbing; between 10 millimetres (4 inches) and 1.2 metres (4 feet) from grade.
- b) Chain-Link - a fence of Chain Link construction shall comprise the following:
- i) A mesh not greater than 38 millimetres (1 and 1/2 inches) consisting of 12 gauge galvanized steel wire, or of 14 gauge steel wire covered with vinyl or other approved plastic which would yield a total thickness equivalent to 12 gauge wire.
- ii) Galvanized steel supporting posts spaced at maximum 3.0 metres (10feet) intervals, and extended at least 1.2 metres (4 feet) below grade.
- iii) End posts and corner posts of minimum 48 millimetres (1 and 7/8 inches) diameter encased in concrete least 50 millimetres (2 inches) thick all around below grade.
- iv) Intermediate posts of minimum 38 millimetres (1 and 1/2 inch) diameter encased in concrete at least 50 millimetres (2 inches) thick all around below grade when more than 15 metres (50 feet) from an end post, a corner post or an intermediate post that is similarly encased.

c) Vertical Board - A fence of vertical board construction shall:

- i) Have vertical boarding 25 millimetres (1 inch) thick nominal attached to a top and bottom rail in such a manner as to not facilitate climbing from the outside. Such vertical boards must not be less than 23 millimetres x 100 millimetres (1 inch x 4 inches) nominal and must be spaced not more than 100 millimetres (4 inches) apart.
- ii) Be supported by posts at least 100 millimetres x 100 millimetres (4 inches x 4 inches) nominal, spaced not more than 2.4 metres (8 feet) apart. Such posts shall be extended at least 1.2 metres (4 feet) into the ground and be securely embedded therein. The portion below grade shall be treated with an approved wood preservative or be of pressure treated wood.
- iii) Have top and bottom rails of at least 50 millimetres x 100 millimetres (2 inches x 4 inches) nominal dimensions.
- iv) Have no openings that would allow the passage of a spherical object having a diameter larger than 100 millimetres (4 inches).

d) Other Types - Other types of fences including retaining walls and deck guards to serve as pool fences shall be constructed in accordance with the requirements of the Ontario Building Code and shall have no vertical opening greater than 50 millimetres (2 inches).

e) Temporary Fence - A temporary fence shall consist of 1.2 metres (4 feet) high plastic mesh fence having a mesh not greater than 38 millimetres (1.5 inches), with a steel T-bar post every 3 metres (10 feet) maximum and a 9 gauge galvanized steel wire located at the top and bottom of such fence. A temporary fence shall be permitted during construction of a pool and must be replaced prior to the pool being used.

f) Shall include no part consisting of barbed wire or have no similar dangerous characteristics such as a device for projecting electric current through the fence.

3.4 Despite Section 3.2, where a fence is not installed to enclose a swimming pool, a safety cover certified to meet the requirements of the Safety Cover Performance Specification must be installed and maintained on the swimming pool in accordance with that specification.

3.5 Hot tubs, need not comply with Section 3.2 of this By-law provided that a substantial cover is fixed securely to the hot tub and locked to prevent access when the hot tub is not in use.

3.6 Where a fence is not provided in accordance with Section 3.2 and a safety cover is installed in accordance with Section 3.5, it

is the responsibility of the occupier of the property to have the safety cover properly secured to prevent access to the pool when the pool is not in use and not under the direct supervision of a competent person.

- 3.7** Where a fence is not provided in accordance with Section 3.2, the owner of the property must enter into a covenant with the Township to indemnify the Township against all claims and demands, actions, suits or other proceedings against all loss and costs, which may be caused by or arise out of, or in any way be attributable or incidental to the owner's non-compliance with Section 3.2.

4.0 Security

Every person who constructs or installs a pool shall ensure that the gates, floors and access points of a pool enclosure meets the following requirements:

- 4.1** Gates shall be of the same construction and height to that required for the fence.
- 4.2** Gates shall be supported on substantial hinges.
- 4.3** Gates shall be equipped with self-closing and self-latching devices placed at the top and on the pool side of the gate or equipped with a lock.
- 4.4** The swimming pool area must be secured at all times except when actually used by the owner, his family or persons authorized by the owner to use the pool.
- 4.5** A fence erected on the owner's property which complies with the provisions of the By-Law shall be deemed a sufficient fence, if it completely fences in the yard in which the swimming pool is located, but in no case shall the fence be closer to the nearest inside wetted surface of the swimming pool wall than four (4) feet.
- 4.6** No pool fence shall be located closer than four (4) feet to any condition that facilitates the climbing of the enclosure, unless alternative measures are implemented to provide an equivalent level of safety as set out in this By-Law.
- 4.7** A wall or walls of a building or buildings may form part of such fence provided that all doors affording access from a building directly to an enclosed swimming pool area, other than doors located in a dwelling unit, are equipped with a self-closing device and self-latching device located not less than forty-eight (48) inches above the bottom of the door.
- 4.8** The owner of every pool shall ensure that every gate or door providing access to such swimming pool be kept locked at all times when a responsible person is not present and supervising the pool.
- 4.9** Existing pools which are fenced at the passing of this By-law shall be inspected by the Chief Building Official or his/her designate to determine whether the existing fence and gates are adequate to protect the safety and welfare of children who might otherwise gain access to the pool. The minimum

requirements for existing pools are a 1.2 metres (4 feet) high fence with no horizontal members that would facilitate climbing, and an area to provide access for the entire perimeter of the pool. If those requirements cannot be met, such fences and gates shall be made to comply with this By-law.

5.0 Offences

- 5.1** No person shall hinder or otherwise obstruct, nor attempt to hinder or obstruct, either directly or indirectly, an Officer, employee and/or agent of the Municipality in the lawful exercise of a power or duty under this by-law.
- 5.2** Every person shall comply with any Order or Notice issued under the authority of this bylaw.
- 5.3** The designated official will be responsible for the administration and enforcement of this By-law on all public and private property within the limits of the Municipality.
- 5.4** The designated official may enter upon any property at any reasonable time to inspect a pool and / or pool enclosure for the purpose of determining or affecting its compliance with this By-law.
- 5.5** Every person who contravenes this by-law is guilty of an offence and upon conviction is liable to a fine or penalty as provided for in the Provincial Offences Act, R.S.O. 1990, c.P. 33.
- 5.6** The fine for an offence as established by this By-law are hereto annexed and marked as Schedule 'A' to this By-law.
- 5.7** In addition to the foregoing penalty, failure to comply with the provisions of this By-law may result in the Township undertaking to complete the work and any costs associated with the work shall be billed to the registered property owner in a like manner as taxes.
- 5.8** In the case of an immediate safety hazard, where the designated official has been compelled to remove said hazard, the work and any costs associated with the work shall be billed to the registered property owner in a like manner as taxes.

6.0 Repeal

All previous privately owned swimming pool By-Laws are hereby repealed including bylaw #2012-08-0549.

7.0 Effective Date

This by-law shall come into force and effect on the date of passing.

Read a first, second and third time and finally passed this 18th day of May, 2022.

Michael Moore, Mayor

Carmen Miller, Clerk

**The Corporation of the Township of Whitewater Region
Part I Provincial Offences Act
Bylaw 22-05-14XX: Swimming Pool Fence By-law**

Schedule “A” – Penalty Provisions

Item	Short Form Wording	Provision Creating or Defining Offence	Set Fine
1	Failure to obtain a permit	2.1	\$150
2	Failure to completely enclose a pool	2.2	\$150
3	Failure to enclose a pool filled with water	2.4(a)	\$150
4	Fill a pool with water before inspection	2.4(b)	\$175
5	Permit the removal of any part of a pool enclosure while the pool is filled with water	2.5	\$150
6	Permit an alternation / replacement of a pool without a permit	2.6	\$175
7	Failure to ensure that any hot tub is closed and locked	2.7 (c)	\$150
8	Permit objects or materials near pool to facilitate climbing	2.8	\$150
9	Permit a pool enclosure that may pose a danger or injury to a person	2.9	\$150
10	Pool fence fail to meet minimum height requirement	3.2(a)	\$150
11	Pool enclosure is constructed of non-permitted materials	3.3	\$150
12	Permit a pool enclosure that may facilitate climbing	3.3 (a)	\$150
13	Permit a pool enclosure with an excess of maximum size permitted	3.3	\$150
14	Permit an excess of maximum clearance permitted	3.3 (c)(iv)	\$150
15	Failure enter into a covenant	3.7	\$150
16	Failure to ensure gates, doors and access points meets the minimum height requirement	4.1	\$150
17	Gates not equipped with self-closing / self-latching devices	4.3	\$150
18	Access point not equipped with a self-closing / self-latching device	4.7	\$150
19	Obstruct/Hinder Officer	5.1	\$250.00
20	Non-Compliance with an Order or Notice	5.2	\$250.00

Note: The general penalty provision for the offences listed above is Section 5.5 of By-Law No.22-05-1506 certified copy of which has been filed.